

Appl. No. 10/797,423
Atty. Docket No. 9181
Amdt. dated June 20, 2006
Reply to Office Action of February 23, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 20 are pending in the present application. No additional claims fee is believed to be due. Claims 1 – 20 have been rejected under 35 U.S.C. § 103. Claims 1, 6, 14 and 20 have been amended. Support for these amendments may be found at page 14, lines 20-27. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112

Claim 6 has been rejected under 35 USC §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Office Action states that Claim 6, line 2 recites “a non woven high loft batting material.” The Office Action further states that it is not clear if Applicants are referring to the nonwoven high loft batting material recited in claim 1.

Claim 6 has been amended to depend from Claim 1, and the word “a” has been replaced with the word “the.” These amendments address the rejection by clarifying the nonwoven high loft batting material to which Claim 6 refers. Therefore, the rejection under §112 second paragraph is believed to be overcome by this amendment.

Rejection Under 35 U.S.C. §103 Over Otten in view of Girardot or USPAP (2005/0042261) or Taylor

Claims 1 – 6, 11, 14 – 16 and 20 have been rejected under 35 U.S.C. § 103 as being obvious over Otten et al. (US Patent No. 6,257,785) in light of Girardot (US Patent No. 5,412,830) or USPAP No. 2005/0042261 (hereinafter “‘261”) or Taylor (US Patent No. 5,955,417). Applicants respectfully traverse this rejection.

The Office Action states that Otten et al teach a disposable glove comprising a front panel, a back panel having a periphery wherein the front panel and back panel meet and form a seamless connection. The Office Action states that the front panel has an inner surface and an outer surface that is opposite to the inner surface. The Office Action

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states that the glove further comprises an opening for inserting the user's hand. The Office Action states that Otten et al teach the first or inner surface of the back panel and/or the second or outer surface of the front panel can comprise a fibrous material of non-woven material. The Office Action states that the glove is comprised of selectively-activatable sheet material which may be activated to deliver substances such as gels, pastes . . . and liquids which may be released when exposed to contact with external surfaces.

However, Otten fails to teach or suggest a nonwoven high loft batting material. The Examiner relies on the Girardot reference to teach or suggest a nonwoven high loft batting material. The Girardot reference teaches a personal cleansing implement comprising a tubular piece of a diamond-mesh scrim. The diamond mesh scrim may be stretched and gathered into pleats to form a resilient batt (12). A softer layer of hydrophobic knitted material then lies against the top surface of the batt. Scrim, as defined by Webster's Third New International Dictionary, is a durable plainwoven fabric usually of cotton woven loosely with fine to coarse meshes. Scrim, thus, is a woven material. Otten utilizes nonwoven materials. The current application is directed to a nonwoven high loft batting material. There is no teaching, suggestion or motivation provided that one of ordinary skill would, after reading Otten's teaching of nonwoven materials, look to Girardot and in the place of nonwoven materials, utilize woven materials.

Additionally, the scrim in Girardot is a course material that exfoliates the skin (Col. 2, lines 55 – 60). The present invention, on the other hand, teaches a nonwoven sheet member made from a material that provides softness to a user's skin, such as a child's tender skin (Page 9, line 25 – 26). The course scrim batting taught in Girardot would not provide softness to child's tender skin. In fact, one skilled in the art would easily recognize that the nylon material described in the particularly preferred embodiment of the Girardot reference (Col. 6, lines 52 – 57) would have tactile properties closer to those of a fishing net than to the spongelike nonwoven high loft batting material of the present invention. While the Girardot reference may refer to the gathered scrim generically as batting, it is clear that the gathered scrim in Girardot is not the same as the nonwoven high loft batting material of the present invention. Thus, because the Girardot reference teaches a material that will provide extremely unsuitable results if used in conjunction with the present invention, there is no teaching, suggestion or motivation provided that one of ordinary skill in the art would, after reading Otten's teachings, look

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to Girardot to replace the nonwoven high loft batting material of the present invention with the course woven scrim of Girardot.

There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. "There must be some suggestion, motivation, or teaching in the prior art whereby the person of ordinary skill would have selected the components that the inventor selected and use them to make the new device." *Golight Inc. v. Wal-Mart Stores Inc.*, 69 U.S.P.Q.2d 1481, 1488 (Fed. Circ. 2004). In the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude patentability under 35 U.S.C. § 103. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853 (Fed. Cir. 1985). A combination of the respective disclosures in this instance would be improper because there is no suggestion in the references themselves to make Applicants' claimed invention. Based on a lack of motivation to combine the two references, Applicants respectfully submit that the 35 USC §103 rejection over Otten in view of Girardot is improper.

In addition to not teaching or suggesting the nonwoven high loft batting material of the present invention, the Otten reference also fails to teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water, and wherein said mitt is dry prior to being contacted with water. The Girardot reference does not provide the additional teaching or suggestion of the claimed elements that is required by the Examiner to make a *prima facie* case of obviousness under 35 USC §103(a).

The Office Action further cites the '261 reference to find the teaching or suggestion lacking in Otten. The '261 reference discloses an effervescent personal cleansing article comprising a plurality of layers that further comprise a plurality of webs. The article of the '261 reference includes an effervescent composition, comprising an acidic and an alkaline material, and a surfactant. The Office Action states that the '261 reference teaches a cleansing article comprising a nonwoven high loft batting material.

However, the '261 reference is directed to a laminate of web materials, i.e., a pad or wipe, and not the disposable nonwoven cleansing mitt of the present invention. As discussed above, in the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude

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patentability under 35 U.S.C. § 103. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853 (Fed. Cir. 1985). The mitt of the present invention can be especially suitable for use by a child because it does not require the hand strength or coordination often lacking in a child that using the pad or wipe of '261 requires. Because the mitt of the present invention can be put on the hand of a child, the child can conveniently and enjoyably wash himself without having to hold onto a pad that may be too slippery or too large for the child to adequately maintain a prolonged grip. In the case of a wipe-like article, the child may lack the coordination to keep the wipe-like article from bunching up on itself during the washing process to the point where the child may be unable or unwilling to use it as a personal cleansing article. A combination of the respective disclosures in this instance would be improper because there is no suggestion in the references themselves to make Applicants' claimed invention. Based on a lack of motivation to combine the two references, Applicants respectfully submit that the 35 USC §103 rejection over Otten in view of '261 is improper.

Even if the '261 reference discloses a suitable nonwoven high loft batting material lacking in Otten, and the proper motivation to combine it with Otten is present, '261 still does not teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water and that the mitt is dry prior to being contacted with water. Thus, because Otten in view of '261 does not teach or suggest each and every element of the present invention as amended, a *prima facie* case for obviousness under 35 USC §103(a) is not made by the Office Action.

The Office Action also cites Taylor to find the teaching or suggestion lacking in Otten with regard to a high loft nonwoven material. The Taylor reference teaches a scouring pad that is used for cleaning and polishing inorganic surfaces, specific examples of which include aluminum, copper, Teflon® (i.e., polytetrafluoroethylene) and fine china (Col. 2, lines 40 – 44). As discussed above, in the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude patentability under 35 U.S.C. § 103. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853 (Fed. Cir. 1985). Because the present invention teaches, *inter alia*, a nonwoven cleansing mitt that can preferably be used on a child's tender skin, there exists no motivation to combine the glove of Otten, which can be used as a personal cleansing device, with the harsh scouring pad of Taylor, which teaches uses on surfaces not even

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remotely as sensitive as a child's tender skin. A combination of the respective disclosures in this instance would be improper because there is no suggestion in the references themselves to make Applicants' claimed invention. Based on a lack of motivation to combine the two references, Applicants respectfully submit that the 35 USC §103 rejection over Otten in view of Taylor is improper.

Even if the Taylor reference discloses a suitable nonwoven high loft batting material not present in Otten, it still does not teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water and that the mitt is dry prior to being contacted with water. Thus, because Otten in view of '261 does not teach or suggest each and every element of the present invention as amended, a *prima facie* case for obviousness under 35 USC §103(a) is not made by the Office Action.

Because Otten does not teach each and every element of the present invention as amended, and the Girardot, '261 and Taylor references all fail to provide the missing disclosure, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of Claims 1 – 6, 11, 14 – 16 and 20 under 35 USC §103(a) over Otten in view of Girardot, '261 or Taylor.

**Rejection Under 35 U.S.C. §103 Over Otten in view of Girardot or USPAP
(2005/0042261) or Taylor, and further in view of Skewes**

Claims 7 – 8 and 17 – 18 have been rejected under 35 USC §103(a) over Otten et al. (US Patent No. 6,257,785) in light of Girardot (US Patent No. 5,412,830) or USPAP No. 2005/0042261 or Taylor (US Patent No. 5,955,417) and further in view of Skewes (US Patent No. 6,206,863). Applicants respectfully traverse this rejection.

The Office Action states that Skewes reference teaches a mitt made of two nonwoven layered sheets wherein the nonwoven comprises cotton or polyester/cotton blend. However, for the reasons stated above, Otten, alone or in combination with Girardot, '261 or Taylor, does not teach or suggest each and every element of the claimed invention as amended, and thus the Office Action must rely on the Skewes reference for the missing disclosure.

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Skewes is cited by the Examiner to provide the missing disclosure of the aforementioned references with regard to mitts comprising natural fibers, synthetic fibers, and combinations thereof. Otten fails to teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water and that the mitt is dry prior to being contacted with water. The Skewes reference fails to provide the missing disclosure, and therefore, even if Skewes provides the disclosure for which it is cited, a *prima facie* case of obviousness is not made by the Examiner. Because Claim 8 depends from Claim 7 which in turn depends from Claim 1, Otten, in view of Girardot or USPAP (2005/0042261) or Taylor, and further in view of Skewes, fails to teach or suggest each and every element of the claimed invention as amended. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

**Rejection Under 35 U.S.C. §103 Over Otten in view of Girardot or USPAP
(2005/0042261) or Taylor, and further in view of W0/03/000106**

Claims 9 – 12 have been rejected under 35 USC §103(a) over Otten et al. (US Patent No. 6,257,785) in light of Girardot (US Patent No. 5,412,830) or USPAP No. 2005/0042261 or Taylor (US Patent No. 5,955,417) and further in view of W0/03/000106 (“’106”). Applicants respectfully traverse this rejection.

The Office Action correctly states that the Otten reference does not require a polyolefin film attached to an inner side of one of the panels. The Office Action states that the ‘106 reference teaches a disposable mitt comprising a wetting side and a drying side. The Office Action states that the wetting side of the mitt comprises a body portion (20), cuff portion (21), central portion (22) and distal portion (23) and absorbent core. The Office Action further states that it would have been obvious . . . to have attached a polyolefin film to an inner side of one of the panels disclosed in Otten so that the inner side of the panel may be impervious to fluids and protect the user’s hand as taught by ‘106.

The ‘106 reference is cited by the Examiner to provide the missing disclosure of the aforementioned references with regard to a disposable nonwoven cleansing mitt,

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wherein said second member further comprises a polyolefin film attached to said interior surface of said second member. In one embodiment of the present invention, the polyolefin film can be used preferably as a retaining aid (Page 8, lines 6 – 7), i.e. to keep the mitt on the user's hand, as opposed to protecting the hand from liquid insults. The retaining aid in the aforementioned embodiment can be positioned adjacent the back of the hand, which may see significantly less liquid than the palm of the hand, and therefore does not necessarily need to be impermeable as does the film of '106. By placing the polyolefin film in this configuration, the retaining aid can function more effectively if it is not subjected to the changing physical conformities that can be associated with the palm of the hand. Thus, the polyolefin film attached to the wet side of the article in '106 serves only for protecting the user's hand from liquid, and not as the retaining aid exemplified in one embodiment of the present invention.

As discussed above, in the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude patentability under 35 U.S.C. § 103. *King Instrument Corp. v. Otari Corp.*, 767 F.2d 853 (Fed. Cir. 1985). Because the present invention teaches, *inter alia*, a retaining aid attached to the inner side of the second nonwoven member, there exists no motivation to combine the glove of Otten with the hand-protecting polyolefin of '106, which is situated proximate the wet side of the '106 article. Therefore, a combination of the respective disclosures in this instance would be improper because there is no suggestion in the references themselves to make Applicants' claimed invention. Based on a lack of motivation to combine the two references, Applicants respectfully submit that the rejection of Claims 9 – 12 under 35 USC §103(a) over Otten et al. in light of Girardot or USPAP No. 2005/0042261 or Taylor and further in view of W0/03/000106 is improper.

Otten fails to teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water, and wherein said mitt is dry prior to being contacted with water. The '106 reference fails to provide the missing disclosure, and therefore, even if '106 does provide the disclosure for which it is cited, a *prima facie* case of obviousness is not made by the Examiner. Because Claims 9 – 12 ultimately all depend from Claim 1, Otten, in view of Girardot, USPAP (2005/0042261) or Taylor, and further in view of '106, fails to teach or suggest

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each and every element of the claimed invention as amended. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

**Rejection Under 35 U.S.C. §103 Over Otten in view of Girardot or USPAP
(2005/0042261) or Taylor, and further in view of FR 2,813,777**

Claim 13 has been rejected under 35 USC 103(a) over Otten et al. (US Patent No. 6,257,785) in light of Girardot (US Patent No. 5,412,830) or USPAP No. 2005/0042261 or Taylor (US Patent No. 5,955,417) and further in view of FR 2,813,777 ("777"). Applicants respectfully traverse this rejection.

The '777 reference is cited by the Office Action to provide the missing disclosure of the aforementioned references with regard to printed matter on the exterior of one of the panels. The Office Action states that '777 teaches a disposable glove comprising three superposed layers of different materials wherein the first layer is soft nonwoven light cotton fiber, the second is absorbent nonwoven wadding material and the third is an impermeable film. The Office Action states that the '777 reference teaches the disposable glove comprises a written material.

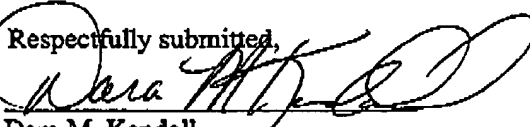
As discussed above, Otten fails to teach or suggest a disposable nonwoven cleansing mitt comprising, *inter alia*, a personal care composition comprising no more than about 7% water and that the mitt is dry prior to being contacted with water. The '777 reference fails to provide the missing disclosure, and therefore, even if '777 provides the disclosure for which it is cited, a *prima facie* case of obviousness is not made by the Examiner. Because Claim 13 depends from Claim 1, Otten, in view of Girardot or USPAP (2005/0042261) or Taylor, and further in view of '777, fails to teach or suggest each and every element of the claimed invention as amended. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 112 and 35 U.S.C. § 103. Early and favorable action in the case is respectfully requested.

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This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1 – 20 are respectfully requested.

Respectfully submitted,
By 
Dara M. Kendall
Registration No. 43,709
(513) 634-1787

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Customer No. 27752